

1 ALEX G. TSE (CABN 152348)
United States Attorney

2 BARBARA J. VALLIERE (DCBN 439353)
3 Chief, Criminal Division

4 JEFF SCHENK (CABN 234355)
JOHN C. BOSTIC (CABN 264367)
5 ROBERT S. LEACH (CABN 196191)
Assistant United States Attorney

6 150 Almaden Boulevard, Suite 900
7 San Jose, California 95113
8 Telephone: (408) 535-5061
FAX: (408) 535-5066
john.bostic@usdoj.gov

9 Attorneys for United States of America

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11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA
13 SAN JOSE DIVISION

14 UNITED STATES OF AMERICA,) CASE NO. 18-CR-00258 EJD
15 Plaintiff,)
16 v.) DECLARATION OF JOHN BOSTIC IN SUPPORT
17 ELIZABETH A. HOLMES and) OF UNITED STATES' OPPOSITION TO
RAMESH "SUNNY" BALWANI,) DEFENDANTS' MOTION FOR CEASE AND
18 Defendants.) DESIST ORDER
19) Date: October 12, 2018
20) Time: 10:00 a.m.
21) Court: Hon. Susan van Keulen

22 I, JOHN C. BOSTIC, declare as follows:

23 1. I am an Assistant United States Attorney in the Northern District of California, licensed
and admitted to practice before this Court. I submit this declaration in support of the government's
Opposition to Defendants' Motion for Cease and Desist Order.

24 2. On September 6, 2017, a grand jury in the Northern District of California served a
subpoena on Theranos. After serving the subpoena, the government had a series of discussions with
Theranos counsel regarding the company's response. According to Theranos's lawyers, one of the

1 company's chief goals in responding to the subpoena was to minimize expense. In an effort to
2 accommodate that goal, the government extended Theranos's compliance deadline and agreed to accept
3 Theranos's responsive production on a rolling basis. The government also agreed that, as a first step in
4 complying with the subpoena, Theranos could produce documents from a set it had already compiled in
5 connection with its litigation against investor Partner Fund Management. Theranos lawyers informed
6 the government that this set of documents did not include any materials created after October 2016,
7 when that collection had occurred.

8 3. Over the following months, Theranos sent the government a series of document
9 productions. Government counsel communicated regularly with Theranos's lawyers during that time
10 period—by telephone, email, and written letter—as the two parties continued to negotiate Theranos's
11 rolling subpoena response. In those discussions, the government was clear with Theranos that the
12 company would need to collect and produce documents created during the time period from October
13 2016 to September 2017 in order to comply with the subpoena.

14 4. Following the original Indictment in June 2018, the government has continued its
15 investigation on behalf of the grand jury. That investigation has included interviewing newly identified
16 witnesses and collecting additional evidence. The government's post-indictment use of the grand jury
17 subpoena has not been for the sole or dominant purpose of preparing the case for trial, but has been in
18 service of an ongoing investigation into criminal conduct beyond what is charged in the Indictment.

19 5. In particular, the government worked to complete its collection of necessary evidence
20 from Theranos, including relevant documents from the 2016-2017 time period not covered in Theranos's
21 earlier productions. The government and Theranos negotiated at length regarding these documents.
22 Throughout those negotiations, Theranos was represented by several attorneys from Wilmer Hale, and
23 consistently indicated its desire to cooperate with the grand jury subpoena. As the parties were nearing a
24 final agreement, counsel for Balwani sent a letter to the government, copying Theranos's lawyers,
25 objecting to any further production in response to the subpoena. In response, Theranos counsel stated
26 that the company would withhold production of the remaining responsive documents. The government
27 then informed Theranos that such a course of action would force the government to seek relief from the
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1 Court. A true and correct copy of that email exchange is attached hereto as **Exhibit A**. Theranos
2 responded by confirming that it intended to produce the documents the parties had been discussing.

3 6. On September 14, 2018, Theranos made its final production of documents in response to
4 the September 2017 grand jury subpoena. Theranos counsel has informed me that Theranos excluded
5 from that production documents containing names from an extensive list of lawyers and law firms
6 retained by the company and the individual Defendants, including the lawyers and firms representing
7 Holmes and Balwani in this case.

8 7. On September 21, 2018, I spoke with counsel representing the assignee who is now in
9 control of Theranos's assets and legal rights as the company goes through dissolution. On that date,
10 counsel informed me that the assignee takes no position on Defendant's pending motion for a cease and
11 desist order.

12 I declare under penalty of perjury under the laws of the United States that the foregoing is true
13 and correct to the best of my knowledge.

14 Executed this 24th day of September in San Jose, California.

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16 
17 JOHN C. BOSTIC